

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES BAILEY, as Personal
Representative of the Estate of
Jane Bailey, deceased, and ROBERT
BAILEY,

Plaintiffs,

vs.

Case No.: 11-14199-GCS-MAR
Judge: George Caram Steeh

NYLONCRAFT, INC.,

Defendant.

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**MOTION FOR ENTRY OF ORDER APPROVING SETTLEMENT,
AUTHORIZING PLAINTIFF TO EXECUTE RELEASE AND SETTLEMENT
AGREEMENTS, DISTRIBUTION OF PROCEEDS AND AUTHORIZING
PAYMENT OF ATTORNEY FEES AND COSTS**

NOW COME Robert H. Darling of the law firm, Robert H. Darling, PLLC, and Francis M. Fitzgerald of the law firm of Francis M. Fitzgerald, P.C., attorneys for Plaintiffs herein, and hereby move this Honorable Court to enter an Order approving settlement and authorizing Plaintiff, James Bailey, as Personal Representative of the Estates of Jane Bailey, deceased, and James Bailey, Guardian of Robert Bailey, to execute the Release and Settlement Agreements as well as approving settlement, authorize payment of attorney fees and costs and distribute proceeds, and in support thereof, states as follows:

1. This is an automobile negligence action involving a rear end impact by Bernard Sparazynski, agent of Defendant, Nyloncraft, Inc., which caused personal injuries to Robert Bailey and fatal injuries to Jane Bailey, deceased.

2. A settlement has been reached in this matter which involves a wrongful death action for the fatal injuries to Jane Bailey, deceased, and personal injury to Robert Bailey, which resolves all claims.

3. Plaintiffs believe said settlement to be in their best interests.

4. James Bailey is Personal Representative of the Estate of Jane Bailey, deceased. **(Exhibit 1).**

5. As Personal Representative of the Estate, James Bailey is authorized to and agrees with the settlement of this matter as identified in **Confidential Exhibits A and C.**

6. Next of kin are interested in the settlement and have been advised of this Motion seeking this Court's approval of the settlement, authorize payment of attorney's fees and costs, and grant authority to distribute the proceeds to the next of kin of Jane Bailey, deceased: James Bailey, husband; Robert Bailey, son; Michael Bailey, son; Carolyn Mikelait, mother; Marla Mikelait, sister; Mark Mikelait, brother; Robert Mikelait, brother; and proceeds for personal injuries sustained by Robert Bailey as set forth in **Confidential Exhibit A** which will be presented at the time of the hearing.

7. Mark Mikelait consents to the distribution identified in **Confidential Exhibit A**, thereby, waiving his need for presence at this hearing. (**Exhibit 2**).

8. Robert Mikelait consents to the distribution identified in **Confidential Exhibit A**, thereby, waiving his need for presence at this hearing. (**Exhibit 3**).

9. Marla Mikelait consents to the distribution identified in **Confidential Exhibit A**, thereby, waiving her need for presence at this hearing. (**Exhibit 4**).

10. Carolyn Mikelait consents to the distribution identified in **Confidential Exhibit A**, thereby, waiving her need for presence at this hearing. (**Exhibit 5**).

11. Robert Bailey is a mentally incapacitated individual beyond the age of majority with special needs. His father, James Bailey, has been appointed Guardian. Attached are Letters of Guardianship of Individual with Developmental Disability establishing James Bailey as Guardian and specifically authorizing James Bailey to settle both Robert's claim for personal injuries and Robert's interest in the wrongful death action for loss of society, companionship and support. (**Exhibit 6**). The monies to be distributed to Robert Bailey for his personal injuries as well as Robert Bailey's interest in the wrongful

death action for loss of society, companionship, and support are to be transferred to the Special Needs Trust.

12. James Bailey, as Guardian of Robert Bailey, believes and agrees that the settlement is in the best interest of Robert Bailey.

13. Linda Bobrin has been appointed Guardian Ad Litem for the interests of Robert Bailey.

14. Linda Bobrin has reviewed the proposed settlement for Robert Bailey in detail and approves the settlement as it is in the best interest of Robert Bailey. Her report is **Confidential Exhibit B**.

15. There are no outstanding funeral or burial expenses owed by the Estate of Jane Bailey, deceased.

16. There are no outstanding Medicaid or Medicare liens.

17. There was no conscious pain and suffering sustained by Jane Bailey, deceased as a result of this incident.

18. That as a result of pursuing said civil action, the law firms of Robert H. Darling, PLLC and Francis M. Fitzgerald, P.C. are entitled to reimbursement of costs and payment of attorney fees in accordance with a contingency fee agreement previously entered into with Francis Fitzgerald, P.C.

19. That this settlement is confidential by agreement of the parties.

20. That at the time of the hearing, Plaintiffs' counsel will present a proposed Order, together with exhibits, setting forth the amount of the settlement, attorney's fees, costs and the proposed distribution which is identified in **Confidential Exhibit A**.

21. The Confidential Settlement Agreement and Release is presented as **Confidential Exhibit C**.

22. That this Motion will be heard before this Honorable Court at a date and time to be set by the Court, **but no later than December 15, 2012**.

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order approving the settlement and distributing the total proceeds of the cause of action as follows:

- a. Authorizing James Bailey, as Personal Representative of the Estate of Jane Bailey, deceased, and James Bailey, Guardian of Robert Bailey to execute the Release and Settlement Agreements;
- b. Authorizing payment to the Law Firms of Robert H. Darling, PLLC and Francis M. Fitzgerald, P.C. for costs in pursuing said civil action as set forth in **Confidential Exhibit A** which will be made available in camera;
- c. Authorizing payment to the Law Firms of Robert H. Darling, PLLC and Francis M. Fitzgerald, P.C. C. for attorney fees, which this Court deems to be fair and reasonable in view of the nature of this cause and commensurate with the contingency fee agreement previously entered into as set forth in **Confidential Exhibit A**;
- d. Authorizing payment of the net settlement proceeds as set forth in **Confidential Exhibit A**.

I declare under the penalties of perjury that the foregoing Motion has been examined by me and is true to the best of my information, knowledge and belief.

Respectfully submitted,

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Dated: December 4, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that on December 4, 2012, I electronically filed the foregoing Plaintiffs' Motion for Entry of Order Approving Settlement, Authorizing Plaintiff to Execute Release and Settlement Agreements, Distribution of Proceeds and Authorizing Payment of Attorney's Fees and Costs and this Certificate of Service with the Clerk of the Court using the ECF filing system which will send notification of such filing to Kenneth.merritt@ceflawyers.com; ddawson@dawson-clark.com; kclark@dawson-clark.com; twienner@wiennergold.com; jyoung@sommerspc.com; twienner@wiennergould.com; bwallace@hooperhathaway.com; and bendurelaw@cs.com.

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